

OPEN MEETING LAW SUMMARY INTRODUCTION

The purpose of this pamphlet is to assist state and local government officials in conducting their business in accordance with the requirements of the Arizona Open Meeting Law.

The life of a public official is not an easy one. State laws, such as the one highlighted in this pamphlet, substantially affect the manner in which government conducts its business. Good intentions help, but they are not enough. Public officials must be familiar with the laws governing their conduct in public office. Violations of the Open Meeting Law carry stiff penalties.

I hope you will take the time to read this pamphlet and retain it for future reference. More importantly, I hope this pamphlet will prompt you to discuss this law with your attorney. **THIS PAMPHLET IS ONLY A STARTING POINT FOR DISCUSSION OF YOUR PARTICULAR CONCERNS, AND IT SHOULD NOT BE VIEWED AS A SUBSTITUTE FOR LEGAL ADVICE FROM YOUR ATTORNEY.**

The Attorney General's office has published two comprehensive handbooks for public officials. The Arizona Agency Handbook contains a detailed discussion of state laws that apply to state officials. The Arizona Local Government Handbook contains a similar discussion of state laws applicable to local government officials. Both handbooks are designed for use by staff and legal counsel of public bodies as well as by public officials, and both contain chapters devoted to a detailed discussion of the Open Meeting Law.

The Arizona Attorney General's Office

GENERAL PROVISIONS

The operation of government and, specifically, the activities of government officials are issues of concern to the general public. Although there are many reasons for this movement toward public awareness, there seems to be one distinct message delivered by the public: THE PUBLIC'S BUSINESS MUST BE CONDUCTED IN PUBLIC!

The Arizona legislature has stated its policy concerning open meetings very clearly:

It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly. Laws 1962, Ch. 138, § 1.

The Law provides very simply that, with a few limited exceptions, all meetings of a public body shall be open to all persons desiring to attend. The Law defines a "meeting" as "the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action." A.R.S. § 38-431(3). The label attached to a public meeting does not affect compliance with the Law. Whether the meeting is referred to as regular or special, workshop or study session, the notice, agenda and minute-taking requirements must be met. The only exception is an executive session, which is discussed later.

"Public body" is defined as "... the legislature, all boards and commissions of the state or political subdivisions, all multi-member governing bodies of departments, agencies, institutions and instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body." A.R.S. § 38-431(5).

This broad definition includes planning and zoning commissions, boards of adjustment, state licensing boards, library boards and school boards. It also includes advisory and subcommittees, even if no member of the public body is a member.

PUBLIC NOTICE OF MEETINGS

The Law requires a public body to give notice of all public meetings and executive sessions to members of the public and to members of the public body. In giving notice, the first step is to file with the appropriate official a statement identifying where public notices of the meetings of the public body will be posted. Those officials include the Secretary of State (for state public bodies), the Clerk of the Board of Supervisors (for county, school district and special district public bodies) and the City or Town Clerk or Mayor's Office (for local public bodies).

Once this statement has been filed, the Law requires that the public body post notice of each of its meetings in accordance with this statement and "give such additional

notice as is reasonable and practicable.” A.R.S. § 38-431.02(A)(1). Notice of individual meetings is not necessary if the public body chooses to post one notice of all of its meetings during a specified time period. A.R.S. § 38-431.02(F).

As a general rule, no public meeting or executive session may be held with less than 24 hours' notice. The notice must include the date, time and place of the meeting. If an executive session will be held, the notice must cite the specific provision of law authorizing the executive session. A.R.S. § 38-431.02.

There are two exceptions to the notice requirements outlined above. First, a meeting for which notice has been properly posted may be recessed and resumed with less than 24 hours' notice. The date, time and place of the resumed meeting must be provided prior to recessing the originally posted meeting. A.R.S. § 38-431.02(E).

Second, an emergency meeting may be held with less than 24 hours' notice. The meeting must be necessary because of an actual emergency. Such an emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequences that would result from waiting until the required notice could be given. Prior to the emergency discussion or action, the members of the public body must announce the nature of the emergency, and those reasons must be included in the minutes of the emergency meeting. A.R.S. § 38-431.02(D).

AGENDAS

In addition to notice of the time, date and place of the meeting, the Law requires that the notice include either an agenda of the matters to be discussed, considered or decided at the meeting, or information on how the public may obtain a copy of the agenda. The agenda for a public meeting must list the “specific matters to be discussed, considered or decided” and should contain “such information as is reasonably necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-431.02(H). Such items as “new business” or “old business” alone are insufficient unless the specific items of new or old business are included.

Agendas for executive sessions must contain a “general description of the matters to be considered” but should not contain information that “would defeat the purpose of the executive session.” A.R.S. § 38-431.02(I).

The agenda may be made part of the public notice or, if the notice advises the public as to how they can obtain an agenda, it can be distributed separate from the notice. In either case, the agenda must be made available at least 24 hours before the meeting, unless an actual emergency is found to exist. Supporting documentation which is referred to in or made part of the agenda must be made available to the public in the same time frame. It may be appended to the actual agenda itself, or the agenda may advise the public where such supporting documentation can be obtained.

The agenda sets the parameters of the public meetings. Only those items specifically listed on the agenda or other matters related thereto may be discussed, considered or decided.

EXECUTIVE SESSIONS

The Law permits an executive session or closed meeting to be held for discussion and consideration of any of seven particular subjects. In addition to the notice requirements set forth earlier, a majority of the members of the public body must vote to convene an executive session during a public meeting held prior to the executive session. The general public is properly excluded from such a session. Only those individuals necessary to the conduct of such a meeting may be present. All matters discussed in an executive session must be kept confidential by those attending. Finally, no vote may be taken during an executive session. Any final action on an item discussed in an executive session must be taken during a public meeting. A.R.S. § 38-431.03.

The purposes for which an executive session discussion may be held are the following:

1. Personnel matters involving a specific individual.
2. Confidential records.
3. Legal advice provided by the public body's attorney.
4. Discussion of pending or contemplated litigation with the public body's attorney.
5. Instruction of designated representatives concerning negotiations with employee organizations.
6. International and interstate negotiations and negotiations by a city or town with a tribal council.
7. Instruction of designated representatives concerning negotiations for the purchase of real property.

Improper use of the executive session provision is the most common type of Open Meeting Law violation. A clear procedure to use when holding an executive session should be established by a public body with the assistance of its attorney.

MINUTES

All public bodies, except subcommittees and advisory committees, must provide written minutes or a recording of all meetings. A.R.S. § 38-431.01. The minutes or recording of all public meetings must include, at a minimum, the following:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters discussed or considered.

4. An accurate description of all legal action proposed, discussed or taken and the names of members who propose each motion.
5. The names of persons making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.
6. Sufficient information to permit further investigation of the background or specific facts of a decision if the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken.
7. A statement setting forth the reasons necessitating a discussion, consideration or decision without the matter being placed on the agenda in case of an actual emergency.
8. A copy of the disclosure statement required in case of ratification.

The minutes of executive sessions must contain the information described in paragraphs 1, 2, 3 and 7 above.

The minutes or a recording of any meeting, except an executive session, must be open to public inspection no later than three working days after the meeting. A.R.S. § 38-431.01. Minutes must be taken in executive sessions and must be kept confidential except from the members of the public body which met in executive session; the officers, appointees or employees who are the subject of discussion; or the county attorney, the attorney general or the auditor general. If the public body wishes to exclude all staff from attending the executive session, then the minutes should be kept or recorded by a member of the public body. A.R.S. § 38-431.03.

In addition to written or recorded minutes of the meeting, the Law provides that any part of a public meeting can be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction as long as there is no significant interference with the conduct of the meeting. A.R.S. § 38-431.01(E).

RATIFICATION

A public body may ratify legal action previously taken in violation of the Law. Ratification is appropriate when the public body needs to validate retroactively a prior act in order to preserve the earlier effective date of the action.

Ratification merely validates the prior action. It does not eliminate liability of the public body or others for violation of the Law.

The procedure for ratification is prescribed in A.R.S. § 38-431.05(B). It is a detailed and complicated procedure which must be followed carefully and with advice of the public body's attorney.

SANCTIONS

If any business of a public body is conducted in violation of the Law, the actions taken at such a meeting are null and void. Any person affected, the attorney general, or the county attorney for the county in which an alleged violation occurred, may file an action and obtain civil penalties, attorney's fees and court injunctions against the offending public body or public official. If the court finds that a public officer intentionally violated the Law, the court may remove him from office and assess him personally with the attorney's fee award. A.R.S. § 38-431.07.

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